

# **REVIEW of the BLOCK EXEMPTION on TECHNOLOGY TRANSFER**

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**Fiona Carlin, Partner  
Baker & McKenzie  
European Law Centre, Brussels**

## **Regulation 240/96 - TTBE**

- entered into force on 1 April 1996
- expires on 31 March 2006
- narrow in scope – “straitjacket”
- Commission’s Evaluation Report proposes overhaul by 2004

## Importance of Current Review

- 2004 – modernization/enlargement
  - no individual exemption procedure
  - more enforcement at national level
  - up to 10 new Member States
- clear and consistent rules are a precondition for predictable enforcement
- TTBE “...*may discourage efficient transactions and hamper dissemination of new technologies*”

## Drawbacks of Regulation 240/96

- **limited scope**
  - patent/know-how licenses
  - between two parties
  - other IPRs covered if ancillary
  - territorial exclusivity subject to duration limits
  - inclusion of improvements cannot extend period of territorial exclusivity

## Envisaged System

- **agreements between non-competitors**
  - BE up to dominance regarding exploitation of IPRs
  - BE up to 30% for other restraints
  - limited blacklist (price-fixing, passive sales)
- **agreements between competitors**
  - BE up to 25%
  - longer blacklist (output restraints, territorial/customer restraints)
- **narrower definition of competitors (sweeping breakthrough/blocking position)**

## Industry Reaction

- ☒ welcomes more liberal system for agreements between non-competitors
- ☒ abandonment of 10 year duration limit on exclusive know-how licenses
- ☐ opposes exclusion of licenses involving dominant firms
- ☒ extension to copyright in software and design rights

## Industry Reaction cont.

- ☑ narrower definition of competitors
- (?) urges more nuanced approach to territorial/output restraints in agreements between competitors, where:
  - licensor is below 25%
  - agreement is non-reciprocal
  - licensee is not restricted as to its own technology

## Market Share Thresholds

- 10% - horizontal *de minimis*
- 15% - vertical *de minimis*
- 25% - licenses between competitors
- 30% - restraints unrelated to IPR exploitation
- dominance - no block exemption

markets: products/technology/innovation



# Non-Compete

- **TTBE**
  - ☐ but licensor can terminate exclusivity and stop licensing improvements
- **new rules**
  - ☒ agreements between non-competitors (30%)
  - ☐ agreements between competitors

## Grant Backs

- **TTBE**
  - ☐ **non-reciprocal**
  - ☐ **exclusive if severable improvements**
- **new rules**
  - ☒ **more generous**

# No Challenge

- **TTBE**
  - ☒ **but licensor may:**
    - **terminate the agreement if licensee disputes validity of know-how or patents**
    - **terminate the license of a patent if licensee alleges that such patent is not “*necessary*”**
- **new rules**
  - ☑ **if licensor is weaker party and fears expropriation?**

## Tying

- **TTBE**
  - ☐ unless necessary for technically proper exploitation
- **new rules**
  - ☒ up to 30%

## Conclusion

- **broadly positive reaction to proposals**
- **strict approach to dominance/  
agreements between competitors**
- **market-share thresholds create legal  
uncertainty**
- **clear guidelines needed**